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May 18, 2020

VIA ECF

Honorable Jeffrey V. Brown
United States District Judge
Southern District of Texas
Galveston Division
601 Rosenberg Avenue
Galveston, Texas 77550

Re: *Cynthia Tisdale, et al., v. Antonios Pagourtzis, et al.*, Case No. 3:20-cv-140

Dear Judge Brown:

I write on behalf of the plaintiffs in the above-referenced action in response to the Court's order dated May 11, 2020, to notify the Court that the plaintiffs intend to file an amended complaint. Plaintiffs also intend to file a motion to remand this action to state court by June 1, 2020. For this reason, the plaintiffs seek permission from the Court to file their amended complaint within 14 days of the Court's decision on the plaintiffs' motion to remand.

This action was removed from the Probate Court in and for Galveston County, Texas, on May 1, 2020 by Defendants Luckygunner, LLC, Red Stag Fulfillment, LLC, MollenhourGross, LLC, Jordan Mollenhour and Dustin Gross (jointly, the "Removing Defendants"). The Notice of Removal was not joined by the defendants in the Probate Court Action, Dimitrios Pagourtzis, Antonios Pagourtzis and Rose Marie Kosmetatos, who filed answer and/or made appearance in such probate cause of action. Currently, Defendant Dimitrios Parourtzis is currently committed at Vernon State Hospital after a criminal court determined that he was not competent to stand trial.

The plaintiffs intend to file their motion to remand within 30 days of removal, raising certain procedural and substantive defects in the Notice of Removal.

On May 8, 2020, the Removing Defendants filed three motions to dismiss (DE Nos. 5,6,7). On May 11, 2020, this Court entered an order noting that the Removing Defendants had not complied with Local Rule 6, and *sua sponte* granting plaintiffs leave to file an amended complaint if they notified the Court of their intent to do so by today.

Plaintiffs wish to amend their complaint pursuant to the Court's order but are mindful of case law in the Fifth Circuit which holds that substantial participation in the litigation before the federal district court may waive a plaintiff's right to assert procedural defects in removal. *See SkyGlass, Inc. v. PartnerShip, LLC*, 3:19-CV-1087-S, 2019 U.S. Dist. LEXIS 137111, at *8-10 (N.D. Tex. Aug. 14, 2019) (collecting Fifth Circuit case law on the issue of waiver, but holding that plaintiff did not waive objection to defective removal where it expressly preserved the procedural defect in a footnote to the amended complaint.). Consistent therewith, Plaintiffs assert that the Removing Defendants Luckygunner, LLC, Red Stag Fulfillment, LLC, MollenhourGross, LLC, Jordan Mollenhour and Dustin Gross have not complied with Local Rule 6 and/or did not join Defendants Dimitrios Pagourtzis, Antonios Pagourtzis and Rose Marie Kosmetatos in their Notice of Removal , among other things.

Consistent with this case law, and in the interest of judicial economy, Plaintiffs therefore request that the Court permit Plaintiffs to file their amended complaint within 14 days of this Court's decision on the Plaintiffs' forthcoming motion to remand (if that motion is not granted). *See In re Carter*, 618 F.2d 1093, 1101 (5th Cir.1980) ("It is a fundamental principle of law that whether subject matter jurisdiction exists is a question answered by looking to the complaint as it existed at the time the petition for removal was filed.") If this request is denied, Plaintiffs will file their amended complaint within 14 days of this letter, as instructed by the Court's Order.

Counsel for Defendants Antonios Pagourtzis and Rose Marie Kosmetatos have provided consent for either of the proposed schedules. *See Exhibits A - C*. No representation by Dimitrios Pagourtzis for consent as to either scheduling order has been obtained because of his current situation. Plaintiffs in this case have maintained joint discussions with counsel for Plaintiffs in *Rosie Yanas, et al v. Antonios Pagourtzis* Case No. 3:20-cv-141 and the counsel for the Removing Defendants. Counsel for the Removing Defendants have not consented to stay briefing on the motions to dismiss until after the motion to remand is decided. *See Email from Andrew Lothson to Alla Lefkowitz*, dated May 14, 2020 ("The briefing on our clients pending Rule 12(b) motions is to proceed in accordance with the Judge's Order, the Federal Rules of Civil Procedure and the Southern District's Local Rules."), attached as Exhibit D.

Very Truly

/s/ Lawrence M. Tylka

Lawrence M. Tylka

Attorneys for Plaintiffs – Tisdale

Attachments:

Exhibit A – Proposed Scheduling Order

Exhibit B – Proposed Scheduling Order

Exhibit C – Email between counsel for Pagourtzis and Kosemtatos and Clint McGuire for Proposed Scheduling

Exhibit D – Email from Andrew Lothson to Alla Lefkowitz, dated May 14, 2020